Local 665, International Alliance of Theatrical Stage Employees (Independent Artists, a Division of Columbia Picture Industries, Inc.) *and* Chester Lau. Case 37-CB-498

19 January 1984

DECISION AND ORDER

BY MEMBERS ZIMMERMAN, HUNTER, AND DENNIS

On 8 July 1983 Administrative Law Judge Richard J. Boyce issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent Local 665, International Alliance of Theatrical Stage Employees, its officers, agents, and representatives, shall take the action set forth in the Order, except that the attached notice is substituted for that of the administrative law judge.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT cause or attempt to cause Independent Artists, a Division of Columbia Picture Industries, Inc., or any other employer, to deny employment to or otherwise discriminate against Chester Lau in violation of Section 8(a)(3) of the Act because he is not a member of or is behind in his dues to our labor organization.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL notify Independent Artists, a Division of Columbia Picture Industries, Inc., in writing, that we have no objection to the employment of Chester Lau, and WE WILL furnish Chester Lau with a copy of that notification.

WE WILL make Chester Lau whole, with interest, for any loss of earnings he may have suffered by reason of our misconduct against him.

LOCAL 665, INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES

DECISION

STATEMENT OF THE CASE

RICHARD J. BOYCE, Administrative Law Judge: This matter was tried before me in Honolulu, Hawaii, March 3, 1983. The charge was filed July 14, 1982, by Chester Lau, acting in his individual capacity (Lau). The complaint issued August 20, was amended during the trial, and alleges that Local 665, International Alliance of Theatrical Stage Employees (the Respondent), violated Section 8(b)(2) and (1)(A) of the National Labor Relations Act (the Act) July 12, 1982, by attempting to cause and causing an employer to discharge Lau because of his nonmembership in the Respondent.[1]

I. JURISDICTION

The Employer in question, Independent Artists, a Division of Columbia Picture Industries, Inc. (IA), is a Delaware corporation engaged in the production and manufacture of motion pictures, television commercials, and related items. Its annual gross revenues excess $500,000, of which over $50,000 is derived from sales to customers across state lines.

IA is an employer engaged in and affecting commerce within Section 2(2), (6), and (7) of the Act.

[1] Sec. 8(b)(2) states in relevant part that it is an unfair labor practice for a labor organization "to cause or attempt to cause an employer to discriminate against an employee in violation of" Sec. 8(a)(3). Sec. 8(a)(3) states that an employer commits an unfair labor practice "by discriminat[ing] in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization."

Sec. 8(b)(1)(A) makes it an unfair labor practice for a labor organization "to restrain or coerce . . . employees in the exercise of the rights guaranteed them in Section 7 . . . ." Sec. 7 states:

> Employees shall have the right to self-organization, to form, join, or assist laor organizations, to bargain collectively through representatives of their own choosing . . . and shall also have the right to refrain from any or all such activities . . . .

II. THE RESPONDENT'S STATUS

The Respondent is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED MISCONDUCT

A. *Evidence*

In July 1982, IA was preparing to shoot a television commercial on the island of Hawaii. Its producer on the project was Paul Rosen. Its location manager was Randy Spangler.[2]

The Respondent's business representative, Joe Ahuna, testified that he and Rosen had a telephone conversation July 11, Rosen being in Hilo and Ahuna in Honolulu and Rosen having placed the call, in which Rosen said he wanted to hire Lau as a cameraman on the project and obtained Lau's telephone number from Ahuna. Ahuna further testified that he told Rosen that Lau was "behind with his [union] dues," and that he gave Rosen the names of four other cameramen "just in case he cannot get hold of" Lau.

Lau in fact had let his dues lapse. Ahuna assertedly was "only joking" when he raised this with Rosen. He elaborated that it is not his "worry" whether the members are behind in their dues—"I just refer people to work; it's the secretary-treasurer that keeps up with your dues, not me."

Lau testified that, about 1 p.m. July 12, he and Rosen had a telephone conversation, Rosen being in Hilo and Lau in Honolulu and Spangler having placed the call, in which it was agreed that Lau would serve as second assistant camerman on the project. Rosen told him to fly to Hilo the next day, with work to begin the day after that, Lau related, and that IA would reimburse him on arrival for the cost of his plane ticket. Lau purchased a Honolulu-Hilo-Honolulu ticket that same day. It provided for a Honolulu departure July 13 at 5:45 p.m.

Spangler corroborated Lau that he initiated the call just described between Rosen and Lau, after which he turned the phone over to Rosen. Spangler testified that he has known and worked with Lau for about 13 years, that Lau "has the most experience from [his] standpoint . . . on the Islands as far as camera equipment and major productions," and that he consequently had recommended him to Rosen.

Spangler testified that, following the July 12 conversation between Rosen and Lau, he called Ahuna to report that Lau had been "contacted . . . to work on the commercial." This was in part "a courtesy call," Spangler explained, "because Joe wants to know who is working and he has to keep his records straight," and in part because "they'll make hassles for you if you don't have union guys." Ahuna reponded, according to Spangler, that Lau's membership was "not in good standing" because he was "not up on his dues," and that IA "should use one of the local union members who [is] in good standing," such as Bob Moore or one of three others mentioned by name. Spangler said, as he recalled, that he would "get back to" Ahuna later.[3]

Spangler continued that he then discussed the situation with Rosen, who accepted his advice that IA "should do what Joe wants . . . to avoid any hassles." With that, Spangler testified, he reached Bob Moore by telephone, arranging for him to serve as second assistant cameraman, after which he informed Ahuna of this development.

Ahuna, while admitting that he had two July 12 conversations with Spangler, denied that Lau was mentioned. He testified, rather, that Spangler called him to ask if Moore was available; that he replied that he would check and that Spangler should call back in 5 minutes; that, having checked, he told Spangler during their followup exchange that Moore was available; and that Spangler then instructed him to tell Moore to fly to Hilo July 14, with work to start July 15.

Ahuna testified that he "had no objections" to IA's hire of Lau, and denied ever saying to Rosen or Spangler that Lau should not be used because "he was not a member of the union, or not in good standing with the union."

Moore did perform as second assistant cameraman on the project, which apparently lasted 2 or 3 days. Lau testified that he learned of his displacement the night of July 12, by message from Spangler recorded on his Code-A-Phone. Spangler testified that the only reason Lau was not used was "because Joe told us he was not in the local union and his dues were not paid."

There was no labor agreement between Respondent and IA.

Rosen did not testify.

B. *Conclusion and Reasons*

It is concluded that the Respondent attempted to and did cause IA to withdraw employment from Lau, and that it therefore violated Section 8(b)(2) and (1)(A) substantially as alleged.

The bases for this conclusion are:

1. Lau is credited that he and Rosen agreed July 12 that he would serve as second assistant cameraman.[4]

2. Spangler is credited that, when he reported to Ahuna IA's plan to use Lau, Ahuna said that Lau was "not in good standing" and that IA "should use" one of four named persons who were "in good standing"; that arrangements subsequently were made for Moore to serve in Lau's stead; and that Ahuna's remarks were the reason Lau was not used.[5]

[2] Spangler, apparently an independent contractor, was retrain by IA to be location manager on the project. He testified that a location manager functions as the producer's assistance, finding locations for shooting, procuring hotel space, getting equipment for the crew, and in general arranging for "whatever they need."

[3] Later asked if Ahuna said IA "should or would have to use local people," Spangler testified: "He said 'would have to use somebody in the local union.'" He then added that, whether Ahuna said "would or should, he means would."

[4] Lau's testimony was coherent and uncontroverted, his demeanor was forthright, and his same-day purchase of the plane ticket lends circumstantial corroboration.

[5] While Spangler's testimony at times was disorganized and tentative, his demeanor was earnest and convincing. Beyond that, the probability is that Ahuna's admitted remarks about Lau's status with the Respondent came after rather than before he had learned that IA was going to use Lau, there being no other explanation for IA's about-face. Finally, Ahuna was not an impressively believable witness.

3. The plain purpose and foreseeable effect of Ahuna's remarks was to achieve that which ensued.

4. As stated in *Northwestern Montana District Council of Carpenters' Unions (Glacier Park Co.)*, 126 NLRB 889, 897 (1960):

> An express demand or request is not essential to a violation of Section 8(b)(2) of the Act. It sufficies if any pressure or inducement is used by the union to influence the employer.

Similarly, quoting from *Electrical Workers IBEW Local 441 (Otto K. Oleson Electronics)*, 221 NLRB 214, 214 (1975):

> [I]t is unnecessary to determine whether Respondent's unlawful conduct was fortified by a threat, as "the relationship of cause and effect, the essential feature of Section 8(b)(2), can exist as well where an inducing communication is in courteous or even precatory terms, as where it is rude and demanding."[6]

CONCLUSIONS OF LAW

By attempting to cause and causing Independent Artists, a Division of Columbia Picture Industries, Inc., to withdraw employment from Chester Lau, as found herein, the Respondent violated Section 8(b)(2) and (1)(A) of the Act.

RECOMMENDED ORDER[7]

The Respondent, Local 665, International Alliance of Theatrical Stage Employees, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Causing or attempting to cause Independent Artists, a Division of Columbia Picture Industries, Inc., or any other employer, to deny employment to or otherwise discriminate against Chester Lau in violation of Section 8(a)(3) of the Act because he is not a member of or is behind in his dues to the Respondent.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take this affirmative action.

(a) Notify Independent Artists, a Division of Columbia Picture Industries, Inc., in writing, that it has no objection to the employment of Chester Lau, and furnish Chester Lau with a copy of that notification.

(b) Make Chester Lau whole, with interest, for any loss of earnings he may have suffered by reason of the Respondent's misconduct against him.[8]

(c) Post at its business offices, meeting halls, and dispatch halls copies of the attached notice marked "Appendix."[9] Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Mail to the Regional Director for Region 20 signed copies of the notice for posting by Independent Artists, a Division of Columbia Picture Industries, Inc., if willing, in places where notices to employees customarily are posted.

(e) Notify the Regional Director for Region 20, in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

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[6] The quotation within the quotation is from *NLRB v. Jarka Corp. of Philadelphia*, 198 F.2d 618, 621 (3d Cir. 1952).

[7] All outstanding motions inconsistent with this recommended Order hereby are denied. If no exceptions are filed as provided by Sec. 102.46. of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[8] Loss of earnings shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *Olympic Medical Corp.*, 250 NLRB 146 (1980), and *Florida Steel Corp.*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing Co.*, 138 NLRB 716 (1962).

[9] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."